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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 556

TURPENTINE & ROSIN FACTORS, INC., *Appellant*,

v.

THE UNITED STATES OF AMERICA, *Appellee*.

Appeal from Judgment in the United States District Court, Southern District of Georgia, Savannah Division

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

1. (a) The opinions delivered in the court below have not been reported.

Appended hereto as Exhibit "A" is a copy of the opinion delivered by the court below upon the rendering of the order appealed from.

Appended hereto as Exhibit "B" is a copy of an earlier opinion and judgment (combined) in the same

case; the judgment being the one, modification of which is being sought by Appellant in this proceeding.

(b) This proceeding is one to modify the judgmen set out in Exhibit "B" hereof, in the manner hereinafter stated.

Modification of the judgment was denied by the court below by order dated July 21, 1960.

This is an appeal from that order, the appeal having been taken pursuant to 15 U.S.C. 29, this being a Sherman Act civil case.

The Notice of Appeal was filed in the court below on September 8, 1960.

(c) The sole question presented on this appeal is whether or not the court below erred in denying Appellant's petition to modify the judgment set out in Exhibit "B" hereof, in the manner requested by Appellant.

(d) A concise statement of the case containing the facts material to the consideration of the question presented, is as follows:

On October 11, 1950 the United States filed in the court below a civil suit against Appellant and seven other defendants, under the Sherman Act.

One of the other defendants was the Savannah Cotton and Naval Stores Exchange, Inc., one was a subsidiary of Appellant and the other five were competitors of Appellant in the Naval Stores factoring business.

The primary purpose of the government's suit was to dissolve the Naval Stores section of the defendant Exchange.

On October 18, 1951, a consent decree was entered in the court below. (Exhibit "B" hereof).

The decree required the Naval Stores section of the defendant Exchange to cease operations within twelve months, unless the decree should be modified in the meantime.

The decree was not modified and the Naval Stores section of the defendant Exchange went out of business at the end of said twelve months period.

The decree (Title VII (c)) also enjoined Appellant and its competitor defendants from buying or selling any naval stores products (rosin or turpentine) on the defendant Exchange.

Said injunction was sought and granted because the chief criticism directed against the Exchange by the Government was that Appellant and its competitor defendants had been permitted by means of "wash" sales on the Exchange, to fix and control the price of crude gum, the raw material out of which rosin and turpentine (called naval stores) are made.

To make sure that this injunction against buying and selling on the Exchange was not violated by defendants, the decree (Title VII (A)) required Appellant and its defendant competitors to report, upon request, to "an independent reporter or service designated by the United States Department of Agriculture such information as to purchases and sales of crude gum and rosin and turpentine as may be requested by said reporter or service."

Further, to protect against collusive or "wash" sales on the defendant Exchange, paragraphs (A) (3) and (B) of Title V were inserted in the decree.

These provisions required all members of the Exchange to report all purchases and sales, if requested in the manner aforesaid.

Under Title X of the decree the court below retained jurisdiction of the case for purposes of modification, termination, enforcement, etc. of the decree.

Pursuant to the provisions of Title X of the decree, Appellant on or about April 15, 1960, some eight and one-half years after the decree was entered, filed its petition in the court below to have the decree modified by eliminating therefrom the compulsory reporting provision contained in Title VII (A), quoted above.

Briefly stated, the facts upon which Appellant relied in its petition for modification of the decree are as follows:

(a) Title VII (A) of the decree has outlived its usefulness because:

(i) The defendant naval stores Exchange has been out of business for many years. There is not now, and has not been since October 18, 1952, anything even remotely resembling a successor Exchange.

(ii) All of the other defendants named in the decree, except Appellant, have long since gone out of business.

(iii) Appellant is the single defendant still in business. But it has many other competitors, who were not defendants and to whom Title VII (A) does not apply. Most of them have gotten into the business since 1951.

(iv) Appellant is thus the only person in the naval stores factoring business who is required to report the details of all of its purchases and sales to the government.

(b) The only legitimate reason for the inclusion of Title VII (A) in the decree originally was to insure against continuation of the abuses on the Exchange which were complained of by the Government.

(c) With the Exchange out of business and all the other defendants except Appellant out of business, the abuses *a fortiori*, are out of business.

(d) But Title VII (A) is now being used to create other abuses under the Sherman Act.

(e) Even though neither the Exchange nor any of the other defendants, except Appellant, are any longer in existence, the Department of Agriculture still required Appellant to report the details of all of purchases and sales, which the Department publishes, and which thus fix, or tend to fix, prices in the field, contrary to the spirit and purpose of the Sherman Act.

(f) Appellant has continued to accede to the reporting demands of the Department of Agriculture only because the decree does not provide, in so many words, that Title VII (A) and Title V (A) (3) & (B) should apply only so long as the Exchange continued in operation.

(g) Appellant is being severely damaged in its business because of the uncompetitive position in which it is placed by this unintended and outmoded use of Title VII (A) of the decree.

(h) Whereas all of its competitors have ready access to all of the details of Appellant's business, Appellant is in the dark as to its competitors' business.

Appellant complained in its petition that this unintended and outmoded use of the provisions of Title VII (A) of the decree was severely damaging Appellant; that because of this it should be stricken from the decree, since it was now being used for a purpose never intended.

After a hearing the court below denied Appellant's petition for modification and this appeal followed.

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